

Planning Board January 8, 2013

Present were: Chair Ernie Allain, Members Aline Boucher, Greg Estrella, David Morin, Ex-Officio members Lucie Remillard, Sue Tremblay, Alternate members Richard Cassidy, Mark Evans

Excused were Fran Cusson, Martha Cregan and Tom McCue

Others present: Pamela Laflamme, Lindsay Deane, Gordon Deane, Allen Bouthillier, and Barbara Tetreault *Berlin Daily Sun*

Chair Allain opened the meeting at 6:33 p.m. He appointed Mr. Evans and Mr. Cassidy voting members for this meeting.

Public Comments – there were no comments

Approval of December Minutes

Mr. Evans moved to approve the minutes as presented; Mrs. Boucher seconded and the motion carried.

Lot Mergers

Rene & Brenda Tremblay of 210 Grafton Street are applying to merge properties at Map 130; Lot 147 & 146. The street address is on Grafton and there are no issues. Mr. Morin moved to approve the lot merger; Mrs. Boucher seconded and the motion was unanimously approved.

Gary Lamontagne of 110 Jolbert Street is applying to merge properties at Map 119; Lots 391 & 394. The property was sold to the abutter as a result of a tax sale. There is frontage on Second Avenue, however due to elevation change it would not be the main entrance to the property. Mr. Morin indicated that there is a traveled right of way. Ms. Laflamme stated that the landowner will likely put in a request to the Council to discontinue. Due to adverse possession, the City Council would have to give up its right to Jeskey Lane. Mr. Morin moved to approve the lot merger noting a potential issue with recognizing the right of way; Mr. Evans seconded and the motion carried unanimously.

Site Plan Review Amendment Request – Jericho Power LLC

Ms. Laflamme reported that she sent maps to the Board showing Jericho's responses to the questions raised by the Planning Board about safety issues with tower height including where they would be seen from, potential noise increases, shadow flicker, and FAA permitting. Specifically Jericho Wind is here to request a change in their approval for four towers at 400 feet to three towers at 500 feet. The approval also states that Jericho Wind will get road access from the Berlin Water Works which seemed to be the most likely access in 2009; however there is also a possibility of accessing their property over State land. The Planning Board's main concern was that there would be access to the property and the specificity to the Water Works can be amended to any legally gained access.

Lindsay Deane gave an over view of Jericho Power LLC's request saying that the main objective is to obtain consensus to decrease the number of towers from four to three and increase the height from 400 feet to 500 feet. The company will be applying for additional permits; system impact study with the next steps being construction and delivery.

Ms. Deane reported that they have approval from the FAA for three turbines at 500 feet; they have been awarded subsidized financing and are ready to move forward.

She showed conceptual views from three locations in the City, one from Main Street where the towers will not be seen; one from the Hospital where the towers will be seen. Ms. Deane stated that they would have been seen at 400 feet as well. The final location was from Cates Hill where the towers will be seen at 500 feet although these towers would have been seen at 400 feet as well.

The fall zone was a concern of the Planning Board and there are no residences in the area. She showed a flicker study and noted that most concern is for residences and there are no nearby residences. The shadow flicker is measured in hours per year that an area will be affected by the shadow which goes from as little to 9 hours per year. The butterfly shape of affected area is due to the angle of the sun.

Ms. Deane reported on a sound study showing 55 db at the property line; the EPA will approve 70 db. Ms. Remillard asked how close the nearest tower is to someone's residence and it was estimated to be one mile on Route 110 where noise levels would be at 20 db which is a whisper. Mr. Morin asked about harmonics where noise can be felt as opposed to heard and Ms. Deane indicated that there was no study done on this issue. Mr. Morin confirmed that towers are measured to the tip of the blade.

Mr. Estrella asked how the proposed change would affect the schedule of erecting the towers. Ms. Deane said that they would be erecting one fewer tower which will take less time but the time table is most dependent on PSNH. Mr. Estrella asked if joints on the towers would be welded expressing some concern for fire and Ms. Deane stated that joints are bolted together and there is no welding.

Gordon Deane, President of Palmer Management stated that most of the construction will be in the fall. They are still waiting for ISO New England and PSNH which could take four months for delivery. Mr. Estrella asked if the windmills are made in the US. Mr. Deane stated that the towers are fabricated in the US; however it is uncertain at this time where the turbines will be manufactured. Mr. Estrella asked if the towers will require lighting as part of the FAA approval and Ms. Deane stated that they will be lit as regulated. Mr. Estrella asked about lightning arrestors and Ms. Deane noted that if struck by lightning, the windmills would ground.

Mr. Estrella asked for the reasoning behind reducing the number of towers and increasing height. Ms. Deane stated that longer blades allow additional wind sweep and the newer technology allows higher capacity per turbine. Mr. Estrella asked, since the 500 ft.

windmill will be scooping more air, is there enough air flow? Ms. Deane confirmed that there is enough.

Public Hearing

Chair Allain opened the public hearing at 7:05 p.m.

Allen Bouthillier stated that he is the abutting landowner and he presented the Board with a letter from his attorney that he said he wanted entered into the record. He stated that he wants clarification about the notation that towers would be 120 feet from the westerly boundary as noted in the minutes from 2009. Ms. Laflamme read the letter.

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January 8, 2013

City of Berlin
Att: Pam Laflamme
168 Main Street
Berlin, NH 03570

RE: Jericho Mountain Wind Company's Amendment Request

Dear Ms. Laflamme:

I represent Allen Bouthillier with respect to his interests in the Jericho Mountain Wind Company's ("Jericho") proposed wind farm in Berlin, New Hampshire. I am writing this letter to express Mr. Bouthillier's opposition to Jericho's recent amendment request. As explained more fully below, **Mr. Bouthillier asks the Board to table this issue for at least a month.**

During the Spring of 2009, the Berlin Planning Board and Zoning Board considered Jericho's sight plan; area variance; and special exception applications.

Mr. Bouthillier, as an interested abutter, requested more information from Jericho to determine whether the mills' wind disturbances would interfere with his plans for a wind project on his own, adjoining property. At that time, the Planning Board recognized that it can investigate the direct physical impacts to abutting properties. The discussion at the public meeting noted that wind disturbances to abutting properties are similar to the issues of water "runoff that is regulated by making developers contain runoff on their own site due to the offsite impacts." (Planning Board Minutes, May 5, 2009). At that time, the Planning Board agreed to table the issue for another month to allow Mr. Bouthillier and Jericho to come to an agreement. *Id.*

During the following month, the parties conferred and, based on its discussions with Mr. Bouthillier, Jericho submitted a modified plan. **Under the modified plan, the towers would be 120 feet from the westerly line of Jericho's property and the towers could not be moved to the top of the mountain.** (Planning Board Minutes, June 2, 2009). While Mr. Bouthillier still had some concerns about the project, especially with regard to wind turbulence, he appreciated the Board and Jericho's efforts to address at least some of his concerns. As such, he did not make any further objections, and he did not appeal the Boards' decisions approving this modified plan. *Id.* Accordingly, the Planning Board approved the Site Plan on June 2, 2009 and the Zoning Board approved a special exception and area variance for the project on April 30, 2009.

However, as you know, Jericho recently filed an application to amend its site plan, area variance, and special exception. The previous plans were approved for six (6) towers at four hundred (400) feet or lower. Jericho now seeks approval for three (3) towers at five hundred (500) feet. Mr. Bouthillier has concerns about the effects the proposed amendments would have on his adjoining property. He does not have sufficient information at this time to fully understand how the new proposal will affect his property. He has hired a consultant to study this issue, but this study will not be complete for several weeks. In order to finish researching this issue, and to engage in further discussions with Jericho, **Mr. Bouthillier asks the Board to table this issue for at least a month.** If the Board does not table the issue, and it approves Jericho's proposal, Mr. Bouthillier will have no choice but to appeal to protect his property interests.

Again, I stress that Mr. Bouthillier is not objecting to this project under all circumstances. He simply needs more time to investigate the issues. Given the fact that Jericho has now filed an amended plan, this request for a brief continuance of the hearing seems reasonable. Mr. Bouthillier prefers to work collaboratively with the Board and Jericho to resolve this matter. I hope that we can do so.

Thank you for your time and consideration.

Sincerely,



Sandra Cabrera, Esq.
Waystack Frizzell, Trial Lawyers

Ms. Deane commented that there is site data indicating that when Mr. Bouthillier constructs his wind towers, he will have a loss mostly because of the side of the mountain he is on which is not the predominant wind direction. Ms. Laflamme asked if there is a standard loss. Ms. Deane showed the study where Jericho Wind LLC used data provided by Mr. Bouthillier and came up with 24,236. There are a lot of variables including loss wake effects, availability, performance, high wind, wind flow, electrical, environmental, and curtailment that will contribute. She added that it literally will depend on how the wind blows.

Mr. Bouthillier stated that he will have a comparable analysis based on where the towers are approved. He has three years worth of data and will have exact information. Ms. Laflamme stated that there is nothing in the original approval that speaks to 120 feet; it would have had to have been in the approved decision which states the entire perimeter setback is 100 feet. She added that it is not meant to be adversarial; it is just not in the decision. Mr. Morin indicated that the Board has specific requests to answer; nothing more or less.

Barbara Tetreault confirmed that the name of the company is Jericho Power LLC and they are leasing land from Jericho Mountain Wind Company. She affirmed with the company officials that they hope to have the towers erected by the end of the year.

Mr. Bouthillier stated that if a decision is made and it adversely affects him financially after he told, for the record, the board to consider the minutes and the map decided prior and the board approves it and it affects his project financially, he holds the board responsible as a landowner and taxpayer. All he wants is 30 days and he wants the facts answered and wants everyone to have the facts.

Chair Allain closed the public hearing at 7:28 p.m.

Mr. Morin moved to revise the Planning Board Decision of June 5, 2012 Item #5 “any access issues over St. Laurent Lane must be worked out with the Berlin Water Works and a letter must be placed on file with the Planning Department” to “any access issues must be worked out and the details of how access will be legally gained to the property will be submitted to the Planning Department and placed on file”; Mr. Estrella seconded and the motion carried.

Mr. Evans asked what the impact is of increasing the diameter of turbines and decreasing amount of towers. Ms. Deane stated the difference is a 20% difference. Mr. Estrella commented that in the original proposal one tower was going to be for trial purposes; he asked if that is still in the plan. Mr. Deane stated that there are no plans for an experimental tower.

Mr. Morin stated that the Board has been approached with a request for amendments to its site plan review. Questions asked by the Board have been answered. With the standards having been met, the Board can approve amending its decision or if there is no hardship to the timeline, the Board could table for additional information. He noted that the new information would not affect the decision since the Board is to discuss a specific set of parameters and nothing else. He asked if the Board is comfortable going from four towers to three and from 400 feet to 500 feet.

Ms. Deane commented that there are time sensitive incentives to get the project under construction before year end. Without those incentives, the project won't go forward. Ms. Remillard asked if there is an impact on the power that would be created, should we not consider that it could make a change and if we know what that impact would be, what could we do? Mr. Deane replied that wind data has been shared and they have come up with an impact of 3 to 4% primarily because the wind comes from the west. His company has spent the last year working doing avian studies, wildlife, wetlands, and visual studies. This project has been on the table since 2009. Jericho Power has offered to work with Mr. Bouthillier as there may be synergies and savings for the two to work together.

Ms. Laflamme commented that in 2009 approval was given to the project and even if there was a 50% loss of wind, how does the Board decide who goes on line. Does the board choose one project over another?

Mr. Bouthillier asked to speak and with the Public Hearing closed, Board members voted unanimously to allow him the floor to make a statement.

Mr. Bouthillier said that he shared wind data with Jericho Wind. He said he had an agreement with Seth Jacobson that both properties could be joined. He said that was “slipped in after they had the data.” He said he owns 850 acres and has invested in a met tower and he is asking to slow the project for 30 days when he will come in to show the data. He said there will be engineers and what will 30 days harm? Mr. Bouthillier went on to say that part of the board’s job is to protect abutters and if they do something it will affect abutting property. Why notify abutters?

Mr. Morin stated that the Board has considered Jericho Power’s responses to questions regarding the requested amendment to the site plan review including fall zone, where the towers will be seen from, potential noise increases, shadow flicker, and FAA permitting. The Board does not have the expertise to consider wind data being offered by Mr. Bouthillier. In context of what was asked of the board, criteria were met and the request for an amendment goes back to the original decision. **Mr. Morin moved to amend the prior decision and allow three 500 foot towers; Mr. Evans seconded and the motion carried unanimously.**

Other – there were no items

Public Comments

Allen Bouthillier asked the Board to make note of a map on the board that shows the fall zone where they will fall onto his property. Ms. Laflamme made the point that some of the fall zone involves State property as well. Mr. Bouthillier referred to the visual and said that towers 2 and 3 could fall on his property. He said it clearly shows the fall zone will affect the abutting property.

Member Comments – there were none

Planner Comments – there were none

Mr. Morin moved to adjourn; Mrs. Boucher seconded and the motion carried. The meeting ended at 7:55 p.m.